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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,556	09/29/2004	Alain Delval	930024-2013	5915
7590 01/07/2008				
Ronald R Santucci		EXAMINER		
Frommer Lawrence & Haug		WILSON, JOHN J		
745 Fifth Avenue		ART UNIT		
New York, NY 10151		PAPER NUMBER		
		3732		
		MAIL DATE		
		DELIVERY MODE		
		01/07/2008		
		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action**  
**Before the Filing of an Appeal Brief**

Application No.

10/509,556

Applicant(s)

DELVAL ET AL.

Examiner

John J. Wilson

Art Unit

3732

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 29 November 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-6 and 8-10.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/John J Wilson/  
Primary Examiner  
Art Unit: 3732

Continuation of 5. Applicant's reply has overcome the following rejection(s): Because claims 7 and 11 are being cancelled, all rejections, 35 U.S.C. 101, 35 U.S.C. 103(a) and 35 U.S.C. 112, first paragraph, as applied to these claims are overcome as being moot.

Continuation of 11. does NOT place the application in condition for allowance because: The amendment to claim 1 "for receiving" is merely a change in language that does not further limit the claims. The flexible deformable tool is still only being inferentially claimed. Applicant argues that Cislak does not meet the claim language of a tool holder for receiving a flexibly deformable tool, and does not show means which keep the tool in position and are arranged in such a way that the axis of the tool in the operating phase is not parallel to the axis of the body. It is held that the tool is capable of receiving a flexibly deformable tool and this is sufficient to meet the claim language. It is also held that Cislak clearly shows means which keep the tool in position. The manner in which the inferentially tool is arranged with respect to the axis of the body is merely intended use of the body with an inferentially claimed tool. It is only necessary to show structure that is capable of holding a tool in an arrangement that is not parallel. Applicant argues that the threaded connection of Cislak is not capable altering the axis of the tool. It is held that the claim language does not read on the body having means to alter the axis of the tool, instead, the body has means to keep the tool in position and the elements are arranged in a manner in the operating phase where the tool is not parallel to the axis of the body. The examiner's position is that Cislak is capable of holding a tool in this position depending on the inferentially claimed tool that the body is used with. For example, the body of Cislak could be used with a known tool as shown by Everett (2016631) which was cited by applicant in the Information Disclosure Statement received September 29, 2004, and as such, Cislak is capable of functioning as claimed. Applicant's argument that the body alters the axis of the tool is held to be reading limitations for the specification into the claim language.